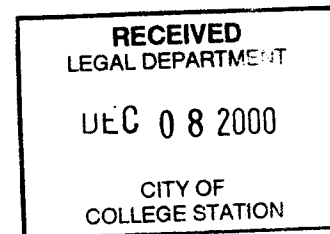


December 6, 2000



Mr. Harvey Cargill, Jr.
City Attorney, City of College Station
P.O. Box 9960
1101 Texas Avenue
College Station, Texas 77842

Dear Mr. Cargill,

Please accept this letter in response to your request of November 28th for a written legal opinion regarding collection of handling fees for processing credit card payments of fines. As you are probably aware, I spoke a few weeks ago with an employee of College Station regarding the issue of whether the collection of such fees was permissible. I informed her that Ch. 132 appeared to allow it, but in my opinion it would be optional to collect the handling fee. It was my opinion, in other words, that a city could choose to absorb the transaction costs of collecting payment by credit card.

Following your phone call to Susan Horton, Susan, Monte Akers and I discussed my advice and decided that a strong argument could be made that the collection of a processing fee from the person paying by credit card is in fact mandatory. The reasons why the fee should be mandatory are as follows:

- 1) §132.003(b) states that the council "...shall set the processing fee in an amount that is reasonably related...." The word "shall" arguably renders mandatory the permissive "may" in §132.002(b). Accordingly, it seems likely that §132.002(b)(1) and (b)(2) are to be read as a "package deal": the city "may" choose to accept payment by credit card and collect the fee, or it may choose to do neither, but it can't do one without the other.
- 2) §132.002(d), added by SB 655 in 1997, gives a county commissioners court the express authority to accept payment by credit card *without* requiring collection of a fee. The absence of such express authority for cities (in a statute that is fairly parallel in its treatment of cities and counties) suggests that such authority was not intended for cities.

I cannot find any cases or opinions regarding this somewhat ambiguous issue. After careful consideration, I think the required collection of the fee is the more prudent reading of the chapter as a whole.

cc Cheryl
Linda
Tom

Please call me if I can be of any further assistance. My phone number is (512) 231-7400.

Sincerely,

A handwritten signature in black ink, appearing to read "Bennett Sandlin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bennett Sandlin

Assistant General Counsel